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August 30, 2016

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OFFICE OF GENERAL
COUNSEL

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RECEIVED
FEDERAL ELECTION
COMMISSION

Re: MUR 7122: Right to Rise USA Response to Complaint

Dear Mr. Jordan:

We are writing this letter on behalf of Right to Rise USA, formerly Right to Rise Super PAC, Inc., and Charles R. Spies, in his official capacity as Treasurer (collectively "RTR") in response to the Complaint filed in the above-referenced matter by self-styled campaign "reform" group, the Campaign Legal Center ("CLC") and its Executive Director, J. Gerald Hebert (collectively the "Complainants") against Gordon Tang, Huaidan Chen, American Pacific International Capital, Inc., and Wilson Chen (collectively the "Named Respondents").

This response is limited to the propriety of RTR's status as a respondent. RTR is not named as a respondent in the complaint, and there are no stated allegations of wrongdoing by RTR. Apparently an over-eager intake clerk in the FEC's Office of General Counsel took it upon him or herself to attempt to also include RTR as a respondent, along with the multiple Named Respondents for which there are actually stated accusations against. The Complaint fails on its face to present a legal theory under which RTR could have possibly violated the Federal Election Campaign Act of 1971, as amended ("FECA" or the "Act"), or the Federal Election Commission's ("FEC" or "Commission") regulations and consequently should be immediately dismissed as regards RTR as a respondent.

The Commission may find "reason to believe" only if a Complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the Act. See 11 C.F.R. § 111.4(a), (d). In this case, despite naming four respondents, and Complainants' vast resources and motivation to create some sort of scenario in the Complaint that, if proven, would constitute a violation of the Act by RTR, they were nonetheless unable to even assert a theory by which RTR could have violated the Act. Complainants frequently make public their disagreements

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with First Amendment protections for political speech and are committed advocates for restrictions on political speech. As such, CLC raises funds for its pro-regulatory lobbying efforts through periodically filing FEC complaints hyperbolically asserting violations of the Act by conservative-leaning organizations and candidates. We note this ideological agenda and practice not to pass judgment upon Complainants, but instead to reinforce that if CLC and Mr. Hebert could have come up with some sort of theory under which RTR might have violated the Act, they would have certainly named RTR as a respondent. However, Complainants did not file a complaint against RTR, and did not assert any facts which, if true, would constitute a violation of the Act by RTR.

The failure to name RTR as a respondent and/or assert any facts which, if true, would constitute a violation of the Act by RTR, is not merely a technical mistake. The contents of the complaint are sworn to and signed in the presence of a notary public as required by 11 C.F.R. § 111.4(b)(2). However, because the complaint names only the four stated Named Respondents, RTR cannot after-the-fact be added as a respondent in this matter by Commission staff. To do so would broaden the Complaint beyond what has been sworn to and signed, which would be impermissible under 11 C.F.R. § 111.4(b)(2). The Commission has taken the position that unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true. *See* MUR 4960, Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons (Dec. 21, 2001). Moreover, the Commission will dismiss a complaint when the allegations are refuted with sufficiently compelling evidence. *See id.*

In the instant case, no allegations have been made regarding RTR, so there are no allegations to refute and no refutation is necessary. We consequently respectfully request that the Commission recognize the legal and factual insufficiency of the complaint on its face and dismiss it as regards the inclusion of RTR as a respondent.

Thank you for your prompt consideration of this matter, and please do not hesitate to contact me directly at (202) 572-8663 with any questions.

Respectfully submitted,



Charles R. Spies
James E. Tyrrell III
Counsel to Right to Rise USA

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